

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

FEDERATED LIFE INSURANCE COMPANY, Plaintiff,
v.
ALEXANDER J. FAZZINO
Serve at: 652 NE Lake Pointe Drive
Lee's Summit, Missouri 64064
AND
BOONE BANK AND TRUST COMPANY
as the Administrator of the ESTATE OF EMILY
ANN BECKWITH FAZZINO
Serve at: 716 8th Street
Boone, Iowa 50036
Defendants.

216-CV19110

Case No.
Division

FILED-CIRCUIT COURT
JACKSON CO., MO-1
2012 JUL 26 AM 8:53

PETITION IN INTERPLEADER

COMES NOW Plaintiff Federated Life Insurance Company ("Federated"), by and through its attorneys, Morrow Willnauer Klosterman Church L.L.C., and pursuant to Rule 52.07 and R.S.Mo. § 507.060, for its Petition in Interpleader states:

Parties

1. Federated is an insurance company organized under the laws of the State of Minnesota, with its principle place of business in Owatonna, Minnesota, and is therefore a citizen of Minnesota. It is duly licensed to do business in the State of Missouri and is therefore also a citizen of Missouri.

2. On July 4, 2003, Federated issued a \$250,000 policy of term life insurance, Policy No. 201870 (the "Policy"), which insured the life of Emily A. Fazzino, who died on January 29, 2012 (the "Decedent"). (Life Insurance Policy, attached herein as Exhibit "A").

1-APTCc

3. Defendant Alexander Fazzino is the designated beneficiary of the Policy. He resides in Jackson County, Missouri, and is therefore a citizen of the State of Missouri.

4. The Boone Bank and Trust Company is the Administrator for the estate of the deceased, Emily Fazzino, and is located in Boone County, Iowa and therefore is a citizen of the State of Iowa. (Letters of Appointment, attached herein as Exhibit "B").

Jurisdiction and Venue

5. Jurisdiction is proper in this Court under the provisions of Article 5 of the Missouri Constitution, Section 14 and because the requirements for interpleader have been satisfied under Rule 52.07 and R.S.Mo. § 507.060.

6. Venue is proper in this Court pursuant to R.S.Mo. § 508.010.2 because Defendant Alexander J. Fazzino resides in Jackson County, Missouri.

Action in Interpleader

7. On or about June 25, 2003, Emily Fazzino signed an application for a policy of ten-year term life insurance policy, in the face amount of \$250,000 with Emily Fazzino as the insured and owner, and her husband, Alexander J. Fazzino, as the Primary Beneficiary. The life insurance application was completed in Lee's Summit, Missouri. No Secondary Beneficiary was designated. (Life Insurance Application, attached herein as Exhibit "C").

8. Federated issued the policy on or about July 4, 2003. (Exhibit A).

9. Emily Fazzino died on January 29, 2012 in Boone, Iowa. The death certificate, which was issued on June 8, 2012, describes the manner of death as "Undetermined." (Death Certificate, attached herein as Exhibit "D").

10. Decedent was survived by her husband, Defendant Alexander Fazzino, and her three minor children—all four of whom now reside in Lee's Summit, Missouri.

11. On January 30, 2012, the report of autopsy indicated the Decedent was found submersed in a bathtub with scalp and forehead contusions and that she had a pending divorce with Alexander Fazzino with a custody dispute. The examiners were of the opinion that Emily Fazzino died of undetermined causes. (Report of Autopsy is attached herein as Exhibit "E").

12. A search warrant was executed on Alexander Fazzino after Emily Fazzino's death.

13. On March 29, 2012, the Boone Bank and Trust Company was appointed as Administrator in the matter of the Estate of Emily Ann Beckwith Fazzino. (Exhibit B).

14. On or about June 12, 2012, Alexander J. Fazzino completed a claim form with respect to the life insurance policy. (Insurance application is attached herein as Exhibit "F").

15. Law enforcement authorities in Iowa continue to investigate the death of Emily Fazzino.

16. Under Missouri's "Slayer Law," if a named beneficiary of life insurance policy intentionally causes the death of the insured, that beneficiary is prohibited from receiving the proceeds of insurance. *Wunsch v. Sun Life Assurance Co. of Canada*, 92 S.W.3d 146, 154 (Mo. App. W.D. 2002), citing *Lee v. Aylward*, 790 S.W.2d 462 (Mo. banc 1990); *Higgins v. McElwee*, 680 S.W.2d 335, 342 (Mo. App. 1984).

17. There is reasonable doubt under Missouri law regarding which party will be entitled to the proceeds of the Policy.

18. Under Iowa law, which may be applicable since Emily Fazzino resided in Iowa for the majority of the ten-year policy term, the named beneficiary of a life insurance policy who intentionally or unjustifiably procures the death of the individual whose life is being insured may not generate benefits under any contractual arrangement under a policy, and, the benefits become

payable as though the person causing the death had predeceased the Decedent. Iowa Code § 633.535.3.

19. Regardless of whether Missouri or Iowa law applies, if it is determined that Alexander Fazzino intentionally or unjustifiably procured the death of Emily Fazzino, he is not entitled to the Policy proceeds.

20. If the Court should determine, for any reason, that Defendant Alexander J. Fazzino is not entitled to any benefits under the Policy, then benefits under the Policy would be payable as if Defendant Alexander J. Fazzino had not survived the Decedent.

21. Under the terms of the Policy, if Alexander Fazzino is deemed to have predeceased Emily Fazzino, the proceeds would be paid to Emily Fazzino's estate since no contingent beneficiary was named.

22. The Boone Bank and Trust Company was appointed as Administrator of the Estate of Emily Fazzino—an Estate that may be entitled to the Policy proceeds.

23. The claims of Defendant Alexander J. Fazzino and Administrator Boone Bank and Trust Company are adverse and competing. By paying all or part of the proceeds of the Policy to either, Federated could be subject to double, multiple, or inconsistent liabilities.

24. Federated has no interest in the proceeds payable under the Policy and is merely an innocent stakeholder wishing to discharge its obligations under the Policy and deliver the proceeds of the Policy to person(s) entitled to proceeds.

25. Federated is ready, willing and able to pay the proceeds of the Policy to the person or persons entitled thereto. Accordingly, Federated unconditionally tenders and offers to deposit with the Court, or as the Court otherwise directs, the proceeds of the Policy plus any applicable interest.

26. Until this Court rules on the issue of the manner in which the proceeds of the Policy should be distributed, Federated cannot safely determine the proper recipients of the proceeds without risking exposure to multiple liability.

27. Federated is a disinterested stakeholder and respectfully seeks to recover its cost and reasonable attorney's fees incurred in bringing the instant action.

WHEREFORE, Federated prays for a judgment:

(a) Permitting Federated to deposit the proceeds of the Policy, plus any applicable interest, into the Registry of this Court, or as this Court otherwise directs, in full and final satisfaction of Federated's obligations under the Policy, to be subject to the Order of this Court and to be paid out as this Court shall direct;

(b) Restraining each of the Defendants by Order and Injunction of this Court from instituting any action against Federated for recovery of the Policy proceeds payable by reason of the death of the Decedent;

(c) Requiring each of the Defendants to answer this Petition in Interpleader and litigate their claims among themselves for the subject proceeds of this action;

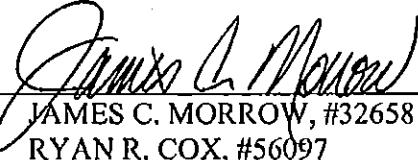
(d) Discharging Federated from any further liability upon payment of the aforementioned proceeds into the Registry of this Court, or as otherwise directed by this Court;

(e) Awarding Federated its costs and attorney's fees incurred in connection with bringing this action and ordering that such costs and reasonable attorney's fees be paid out of the proceeds of the Policy prior to distribution to the person(s) adjudged to be entitled to the proceeds; and

(f) Awarding Federated any such other and further relief as this Court deems just and proper.

MORROW WILLNAUER KLOSTERMAN CHURCH, L.L.C.

By


JAMES C. MORROW, #32658

RYAN R. COX, #56097

Executive Hills East, Building A

10401 Holmes, Suite 300

Kansas City, Missouri 64131-3405

Telephone: (816) 382-1382

Fax: (816) 382-1383

Email: jmorrow@mwkllaw.com
rcox@mwkllaw.com

ATTORNEYS FOR PLAINTIFF